

Date of decision: 23/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KALUBHAI JETHABHAI SOLANKI

VS

STATE OF GUJARAT

Appearance:

MRS MADHUBEN SHARMA	for Petitioner
GOVERNMENT PLEADER	for Respondent No. 1
MR DA BAMBHANIA	for Respondent No. 2

Coram : MR.JUSTICE C.K.THAKKER

ORAL JUDGEMENT

Rule. Mr.D.A.Bambhania, Additional Government Pleader waives service of rule on behalf of the Respondents. In the facts and circumstances, the matter is taken up for final hearing to day.

This petition is filed by the petitioner for quashing and setting aside the order No.146 of 1995 dt. June 16, 1995 passed by the District Judge, Bharuch, Annexure.D to the petition by which the petitioner was granted extra ordinary leave without

pay for the period from March 21, 1993 to February 27, 1994. A prayer is also made that the said office order dt. June 16, 1995 Annexure.D be quashed and set aside and the respondents be directed to pay full salary to the petitioner for the period between March 21, 1993 and February 27, 1994 without treating the break in service.

Pursuant to the notice issued by me the respondents appeared. I have heard Mrs.M.S.Sharma and Mr.Bambhania for the respondents.

It is the case of the petitioner that he was serving as a watchman with the second respondent and he was transferred by an order dt. March 20, 1993 from Jambusar to Hansot. Being aggrieved by the said action, the petitioner approached this court by approaching Special Civil Application No.3864 of 1993 in which notice was issued by this court on April 22, 1993 and was made returnable on April 29, 1993. Regarding interim relief it was observed that "status quo as on to day to be maintained till then".

Thus, as per the said order ad.interim relief regarding maintenance of status quo was granted as on the day on which the court passed the order i.e. April 22, 1993. It is the case of the petitioner that inspite of the above order, the petitioner was not allowed to resume duty at Jambusar from which place he was transferred and hence he filed Civil Application No.1411 of 1994. In that Civil Application, according to the petitioner, he was allowed to resume duties with effect from February 28, 1994. It also appears that when the main matter i.e. Spl.C.A.No.3864 of 1993, came up for hearing before my brother N.J.Pandya J. The said court passed the following order:

The petitioner has been transferred from Jambusar to Hansot. he was working with Jambusar Court as Watchman and in that very post he has been transferred to Hansot. The order Annexure.A is dated 23.3.93 and as stated therein the petitioner has been relieved on that very day. The matter came to be dealt with first by this Court on 22.4.93. Obviously, by then the order was implemented.

Otherwise also, since the matter is of transfer, the petitioner should make a representation to the concerned authority if he is aggrieved by the order. Except for suggesting that he has been discriminated on account of caste, the petitioner being a Scheduled caste, there is hardly anything to the petitioner by way ground in support of the challenge to Annexure.A order. All told therefore, there is no substance in the matter. The petition is dismissed. If there is any question of regularising the period, during which the order of status

quo was operating the petitioner will apply to the Ld. District Judge, who as Head of the Department shall consider the representation in accordance with law. Notice is discharged. No order as to costs."

Thus, looking to the above order, it is clear that the order of transfer was passed by the Second respondent in March 1993 and the petitioner was immediately relieved. The learned counsel for the petitioner contended that the petitioner was on leave and that he remained on leave and in continuation of the said period it could not be contended by the respondent that the petitioner was relieved. The fact, however, remains that the order was passed on March 23, 1993 and the petitioner was treated as relieved and for the first time this court granted ad.interim relief of maintenance of status quo on April 22, 1993. In these circumstances, in my opinion, the petitioner can not claim directly payment of salary for the above period. It is, further his case that to his credit there is leave as of right for 184 days i.e. Earned Leave and that to his credit there is leave on half pay basis for 152 days. That is clear from the certificate issued by the Civil Judge (S.D.) Ankleshwar dt. July 5, 1995. I am not expressing any opinion as to whether the petitioner is entitled to such leave or not. But in my opinion, in view of the said certificate, the petition is required to be reconsidered. The petition is, therefore, partly allowed and the respondent no.2 is directed to reconsider the case of the petitioner in the light of the above certificate as also in the light of the observations made in the order of this court in Special Civil Application No. 3864/93 and also in Civil Application No.1411/94.

Rule is accordingly made absolute to the above extent with no order as to costs.
